IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.332 OF 2005

IN

SUIT NO.3675 OF 1992

AND

NOTICE OF MOTION NO.623 OF 2005

IN

NOTICE OF MOTION NO.332 OF 2005

IN

SUIT NO.3675 OF 1992

Prem Pictures Pvt. Ltd. .... Plaintiffs.

vs.

Shantketan Films and others. ... Defendants.

Mr.A.Y.Bookwala with Tushar Bhavsar i/b. M/s.Ranjit & Co, for plaintiffs.

Mr.V.M.Bhardwaj, for Defendants in support.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. Both these Notices of Motion are taken out by the original defendants, one is for condonation of delay and the other is for setting aside decree which admittedly is consent decree. According to the defendants, the defendants did not consent to consent decree. However, this case of the defendants is totally belied by letter dated 26.4.1994 written by plaintiffs to defendants wherein consent terms filed in Suit no.3675/92 are clearly referred to and from the reply dated 2.5.1994 sent to that notice by Advocate Shri.A.M.Saraogi on behalf of defendants wherein consent terms are clearly referred to and admitted. What is surprising is that it is the case of the defendants that they never instructed Shri.A.M.Saraogi, Advocate to send reply dated 2.5.1994, but though admittedly this reply of Shri.Saraogi, Advocate on behalf of defendants came to the knowledge of the defendants in December,2004, till this date, not a single letter has been written by defendants to Advocate Shri.Saraogi, to find out from him as to how without instructions from the defendants he wrote reply dated 2.5.1994. Obviously, reaction of any person who finds that a lawyer who has not been engaged by him, has sent communication on his behalf, would be to contact that lawyer to find out as to how and why the said Lawyer acted on his behalf without any instructions from him. The defendants are also not in a position to give any explanation as to why they did not contact Shri.Saraogi, Advocate. In my opinion, there can be no reason for a lawyer to write a reply unless he has been

instructed to do so. The conduct of the defendants as referred to above makes them liable for adverse inference to be drawn against them that they did not approach Shri.Saraogi, Advocate, because on their approaching Shri.Saraogi, Advocate, he would have disclosed that he wrote that reply on their behalf since he has been engaged by them. If that is so, then it is clear from the letter dated 2.5.1994 from Shri.Saraogi, Advocate that the defendants were clearly aware of the consent terms filed in this Court and the decree passed pursuant thereto. The reply is dated 2.5.1994 and Notices of Motion have been taken out for condonation of delay and for setting aside the consent decree, in the year 2005 and the explanation for not approaching earlier is that the defendants were not aware of the fact. As I find that from the material available on record that defendants were aware that the consent terms have been filed in this Court and the decree has also been passed, in my opinion, the case put up by the defendants cannot be accepted.

2. It is pertinent to note here that it is not only in the case of Shri.Saraogi, Advocate, that defendants have not taken steps to find out as to why he acted on their behalf without there being any instructions but admittedly, in the suit no.3675 of 1992 one Advocate by name .Mrs.M.D.Vakil, had filed vakalatnama on behalf of defendants and admittedly, the defendants have discovered on taking inspection of record that said Advocate Mrs.M.D.Vakil had filed vakalatnama on their behalf in the suit. It is the case of the defendants that they had also not instructed Advocate Mrs.M.D.Vakil to

file vakalatnama on their behalf. But admittedly, the defendants never approached said Advocate Mrs.M.D.Vakil to find out as to why she had filed vakalatnama on their behalf without being instructed by them. It appears to be clear that this defence adopted by the defendants to wriggle out of their obligation by merely saying that the lawyers who acted on their behalf have not been instructed by them.

3. Taking overall view of the matter therefore, in my opinion, Notices of motion are liable to be rejected and they are accordingly so , rejected. The defendants to pay costs of these notices of motion to the plaintiffs as incurred by plaintiffs.

C.C. be expedited.